



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: SEE BELOW

DATE: May 27, 2014

Approved

Date

6/6/14

COUNCIL DISTRICT: 3

**SUBJECT: CONTRACT FOR THE DESIGN AND CONSTRUCTION OF
PHOTOVOLTAIC PANELS AND SOLAR STRUCTURES AT THE SAN
JOSE ENVIRONMENTAL INNOVATION CENTER**

RECOMMENDATION

Adopt a resolution authorizing the Director of Public Works to:

- a) Reject the bid received on May 15, 2014 for the Photovoltaic Panels and Solar Structures at the San Jose Environmental Innovation Center Project as non-responsive and authorize the Director to re-bid the Project;
- b) Award the construction contract for the Photovoltaic Panels and Solar Structures at the San Jose Environmental Innovation Center Re-Bid Project to the lowest responsive and responsible bidder in an amount not to exceed \$2,728,000 and approve a contingency not to exceed available funding when added to the contract amount or up to 10%, whichever is lower; and
- c) Decide any timely bid protest(s), to make the City's final determination as to the lowest responsive bidder that is responsible, or to reject all bids and re-bid the project; and
- d) Execute change orders in excess of \$100,000 within the contingency amount.

OUTCOME

Adopting of the resolution will allow for the installation of a photovoltaic (PV) system at the San José Environmental Innovation Center. The system is anticipated to generate enough power to offset the site's annual electricity costs and enable the project to be within Leadership in Energy and Environmental Design (LEED) Platinum certification range.

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BACKGROUND

On December 13, 2011, the City accepted a \$2,350,943 grant award from the Economic Development Administration (EDA). The grant requires that the City provide a 30% match in the amount of \$1,007,547. The grant funds are to be used on the installation of a photovoltaic (PV) system at the San José Environmental Innovation Center (EIC). The project consists of the design and construction of photovoltaic panels on the EIC's warehouse and HHW roofs as well as new structures in the western parking lot that provide a minimum of 591,000 kilowatt-hours (kWh) of energy per year. Construction for this project was originally scheduled to start before December 16, 2013; however, due to the delay in completing Phase II construction, which prepares the site's rooftops and parking lot area, the City requested and obtained an extension of the "Start of Construction" deadline to September 21, 2014.

On May 15, 2014, a single bid was received for the project following a 30-day advertising period on BidSync and publication of a total of four weekly notices in the *San José Post Record*. After review of the sole submitted bid, staff determined that it was non-responsive as the bidder (Sun Light and Power, Inc.) listed several exclusions that make their proposal significantly different than what is required in the bid/contract documents. On May 16, 2014, the City issued a notice that the City intended to re-issue a revised bid package in the near future.

Staff subsequently conducted phone interviews of some of the potential bidders that had attended the optional pre-bid walkthrough for the project to gather information as to why they didn't submit a bid. The feedback received was that the variety of technologies, particularly the requirement to use thin film modules and incorporate a tracking system, made the project "risky". Staff also coordinated with the EDA to inform them of the bid results and develop a plan to promptly re-bid the project. A revised bid package addressing the concerns identified by the potential bidders that remains in-line with the intent of the grant is planned for issuance on or about May 28, 2014.

Construction is scheduled to begin in September 2014, with completion in early 2015.

ANALYSIS

Bids for the re-bid project are planned to be opened in June 2014. Due to the timing of the bid opening and the required bid protest periods, there will not be sufficient time for staff to provide a supplemental memo and recommendations for Council consideration prior to the July recess. To be able to meet the EDA's extended Start of Construction deadline, the project's construction contract must be awarded as soon as feasible, and no later than the end of July 2014. Therefore, staff is requesting that Council provide the requested delegated authority to the Director of Public Works so that, once bids are received, the Director may decide any protests and award the contract.

The maximum contract award value has been established based on the funds available and EDA grant limitations on reimbursement of project expenditures. As noted in the memo for the December 13, 2011 Council meeting, the project funding was budgeted for the following uses which have been updated to include funds other than City matching funds for project delivery.

Project Funding Sources

| Description | Amount |
|--|--------------------|
| EDA Grant* | \$2,350,943 |
| City Match / City-Building Energy Project Program | \$ 600,000 |
| City Match / Household Hazardous Waste Las Plumas Facility | \$ 407,547 |
| Other EIC Funds | \$185,000 |
| Total Project Funds | \$3,543,490 |

* See following paragraph for available grant funds per 70/30 reimbursement

Project Funding Use

| Classification | Description | Amount |
|--|---|--------------------|
| Equipment (Design-Build Contractor) | Design equipment purchase, installation and warranty. | \$2,728,000 |
| Contingencies | Unforeseen Costs | \$ 80,490 |
| Project Delivery (Consultant) | Support developing PV system specifications | \$ 10,000 |
| Project Delivery (City) | City staff costs for project management, design review, bidding and award, construction management and inspections costs. | \$ 340,000 |
| | Total Project Expenses | \$3,158,490 |

The EDA will reimburse the City based on a 70/30 ratio of eligible grant budget expenses. As no soft costs can be submitted for reimbursement against the EDA grant, the project delivery expenses to administer the bidding process and provide construction management and inspection services must be born solely by the City. As such, staff has identified up to \$185,000 in additional funds available from the EIC project appropriation. This leaves \$842,547 (30%) in City Match funds against a maximum of \$1,965,943 (70%) in EDA grant funds for the contract and contingencies. After allowing for the established contingency noted in the above table, the maximum awardable contract under the grant becomes \$2,728,000.

Council Policy provides for a standard contingency of 10 percent on public works building projects and 15 percent on public works projects involving the renovation of an existing building. The installation of a new PV system and associated structures on existing, occupied buildings presents some unique challenges that involve elements of both contingency categories. However, for this project, the EDA has only budgeted \$80,490 in contingency for this project. Should bids be lower than \$2,728,000, the requested delegation of authority allows the Director to establish a higher contingency amount up to 10 percent as long as the contract and

contingency combined do not exceed \$2,808,490; which are the available funds for construction under the grant. The grant's terms and conditions allow funds to be transferred to the contingency should there be a cost savings (i.e. lower bids). This recommended contingency strategy should provide funding for any unanticipated work necessary for the timely completion of the project.

EVALUATION AND FOLLOW-UP

Approval of this recommendation will enable the project to move forward into the construction phase. No subsequent Council action on this issue is expected.

PUBLIC OUTREACH/INTEREST

- ☒ **Criterion 1:** Requires Council action on the use of public funds equal to \$1,000,000 or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This recommendation meets Criterion 1. To solicit contractors, this project will be listed on *BidSync* for a minimum of two weeks and advertised on two separate dates in the *San José Post Record*. This memo will be posted on the City's website for the June 17, 2014, Council agenda.

COORDINATION

The project and memorandum have been coordinated with the Planning, Building and Code Enforcement Department, Environmental Services Department, the City Attorney's Office, and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

| | | |
|----|--|--------------|
| 1. | MAXIMUM CONTRACT AMOUNT RECOMMENDED: | \$ 2,728,000 |
| 2. | COST OF PROJECT: | |
| | Project Delivery * | \$ 350,000 |
| | Construction ** | \$ 2,728,000 |
| | EDA Contingency Budget *** | \$ 80,490 |
| | TOTAL PROJECT COST: | \$ 3,158,490 |
| | <p>* Project delivery includes: developing the design-build bid package, overseeing the bid and award process, design and construction management, plan check review and inspection services.</p> <p>** Construction costs include the proposed contract for the installation of the PV system, associated structures and equipment.</p> <p>*** The construction contingency is limited by funds available. Should the lowest responsive bid be less than \$2,728,000, the difference would be allocated to contingency up to a maximum of 10% of the awarded contract amount.</p> | |
| 3. | COST ELEMENTS OF CONTRACT: This is a lump sum contract | |
| 4. | SOURCE OF FUNDING: 423 - Household Hazardous Waste Las Plumas Facility 001 - City-Building Energy Projects Program 423 - EIC (Miscellaneous Funding Sources) | |
| 5. | OPERATING COST: The City is responsible for the electrical utility costs for the site. Based on the project's 591,000 kWh per year generation requirement, it is estimated that the annual cost savings can be approximately \$100,000 once the PV system begins producing energy. Staff is planning to apply for PG&E's Net Energy Metering program to obtain credit for adjacent City-owned properties should there be overproduction at the EIC. | |

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BUDGET REFERENCE

The table below identifies the fund and appropriations proposed to fund the contract(s) recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

| Fund # | Appn # | Appn. Name | RC # | Total Appn | Amt. for Project | 2013-2014 Adopted Budget (Page) | Last Budget Action (Date, Ord. No.) |
|----------------------------------|--------|---|--------|-------------|--------------------|---------------------------------|-------------------------------------|
| Total Project Costs | | | | | \$3,158,490 | | |
| Current Funding Available | | | | | | | |
| 423 | 7275 | Household Hazardous Waste Las Plumas Facility | 178195 | \$4,012,544 | \$2,768,490 | XI-51 | 02/11/2014 Ord. No. 29378 |
| 001 | 3817 | City-Building Energy Projects Program | 009932 | \$897,857 | \$600,000 | IX-15 | 10/08/2013 Ord. No. 29320 |
| 423 | 7605 | EIC (Miscellaneous Funding Sources) | 599573 | \$2,196,481 | \$175,000 | XI-51 | 10/08/2013 Ord. No. 29320 |
| Total Funding Available | | | | | \$3,543,490 | | |

The above funds were appropriated for the EIC PV project for FY 2013-2014. Due the delayed start of construction of the EIC PV project, the remaining available funds have been scheduled for Council budgetary action in June 2014 to re-appropriate funding to FY 2014-2015.

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CEQA

A CEQA Negative Declaration for the installation of photovoltaic panels and parking lot structures at the EIC was adopted on December 1, 2009 (File No. PP09-138).

/s/

DAVID SYKES
Director of Public Works

For questions please contact Barry Ng, Acting Assistant Director, at (408) 535-8300.

RR: dp: lw

ATTACHMENT A: LOCATION MAP
SAN JOSE INNOVATION CENTER
1608 LAS PLUMAS AVENUE, SAN JOSE, CA

